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ABSTRACT

This study was initiated to assess the literature of Supreme Court reporting and to survey the Supreme Court press corps to ascertain (1) a demographic profile of reporters at the court, (2) a reportorial assessment of coverage, and (3) an indication of attitudes of reporters toward court information policies and practices. A questionnaire was sent to all 23 reporters registered at the court during the 1973 October term. The group included "regulars" with fulltime assignments and "occasionals," who cover the court rarely. The study provided a number of findings about reporters, evaluation of coverage, and court information policies. The news media reporter at the Supreme Court seems to be a relatively young, well-educated individual with several years of media experience before coming to the court assignment. Tenure at the court, however, is rather short. Most of the reporters queried were pleased with their own performance and that of their colleagues. However, a number of specific innovations are still sought. The most commonly mentioned of these is a lockup system that would allow reporters to puruse opinions before they are actually announced in order to be better prepared for stories on significant decisions of the court. (Author/SW)

ANOTHER LOOK AT SUPREME COURT REPORTERS AND REPORTAGE

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I. COVERAGE OF THE SUPREME COURT: A REPORTORIAL DILEMMA

Public understanding of the Supreme Court of the United States depends almost exclusively on the news media. For most Americans what appears in the public press is the sole source of information about the workings and decisions of the Court. As former Chief Justice Earl Warren observed, "The importance of a proper understanding of the Court's work can hardly be overemphasized. The decisions of the Court, spanning as they do almost the entire spectrum of our national life, cannot realize true fulfillment unless substantially accurate accounts of the holdings are disseminated."[1] Even greater urgency for competent news coverage is suggested by political scientist Chester A. Newland, who believes that the spread of legal realism and social science criticism in this century has caused the Court to lose "the somewhat protective cloak provided by past myths of mechanical judging."[2] The contemporary Court, Newland writes, is "subjected to increasingly broad political scrutiny" [and] 'consequently, respect for the Supreme Court and law in general depends increasingly upon popular appreciation of the inherent merits of the Court's work."[3]

In spite of its acknowledged importance, media coverage of the Court has been notably weak in the view of critics both within and outside the press. In a blunt 1956 speech to the National Conference of Editorial Writers, Max Freedman of the Manchester Guardian said, "I must declare my conviction that the Supreme Court is the worst reported and worst judged institution in the American system of government."[4] He continued:

> It seems to me simply inconceivable, in the first place, that the average American editor would ever dare to write on a debate in Congress or a decision by the President with the meager preparation which he often manifests in evaluating the judgments of the Supreme Court. Yet in politics "today's panacea is tomorrow's folly, and a politician's reputation is a mist enthroned on a rainbow." A decision by the Supreme Court, on the contrary, may shape America's destiny.[5]

Agreeing, in 1964, a political scientist wrote, "Both the Court and the press need to improve their methods if essential public understanding and support of the Court and a dynamic legal system are to exist."[6] Attorney Lionel S. Sobel, writing in the American Bar Association Journal, in 1970 underscored the problem" "Only rarely do people know exactly what the Court has held, less often do they know why it was held as it has. And almost never do they appreciate the consequences of particular Court decisions."[7] This ignorance, Sobel says, is the result of two facts: "(1) the popular press is the primary, perhaps exclusive source of Court information for most Americans; and (2) Supreme Court reporting is simply not all that it should or could be."[8] But, the consequences are even graver, according to Seth S. Goldschlager in a 1971 senior thesis at Yale Law School:

> The odds are great that few citizens would know that two weeks out of each month, the highest court is listening for four hours a day to important arguments addressed to some of the most intriguing social questions that will ever have measurable impact on their daily lives. And the chances are as high that should the Court decide or act on these issues, only a tiny percentage will be reported with any sense of the importance or meaning of the work, so that even those who actively seek out news of the Court's work, will find the search all too often, a futile one.[9]

Most critics of Court reporting suggest that the responsibility for its quality lies both with the news media and with the Court. As in most media criticism, commentators concerned with this problem accentuate the negative. Citing public opinion surveys, that document a shocking lack of public awareness and knowledge of the Supreme Court and its work, they suggest that this is due to a failure on the part of the news media. The critics also maintain that this failure is the product of (a) disproportionately less reportorial emphasis on the Supreme Court than on the Presidency and the Congress, and (b) information policies of the Court itself which discourage full media coverage.

In recent years there has been increased scholarly intrest in media coverage of the Court, by political scientists, legal scholars and communications researchers. Much of that work is reviewed in Part I of this paper which examines

the dilemma of reportage at the Court in several dimensions, namely, reportorial constraints, reportorial performance, sources for Supreme Court news, public opinion and editorial demands, as well as prescriptions for improved reporting. This sets the stage for Part II which is a survey of reporters at the Supreme Court in January 1974. This study provides a demographic profile of the reporters, a self-assessment of performance, time allocation, perceived audience, accuracy in reporting as well as attitudes toward current Court information policies. Finally, there are some modest proposals aimed at improved coverage.

A. Reportorial/Constrants at the Court

It has often been suggested that the news media would never think of covering professional athletics with the paucity of resources that go into Supreme Court reporting. This useful analogy was demonstrated by editor Wallace Carroll in a Pulitzer Memorial Lecture at Columbia University. He wrote:

> Let's suppose that when the time comes to cover the World Series, one of the great press associations decides that it can spare only one reporter who has any knowledge of the game. Let's suppose that, for purposes of speed, it decides that this reporter should not sit where he can see the game but stay on an open line in a phone booth below the stands.* And let's suppose that in order to let him know what is happening on the field, a man who doesn't know very much about baseball sits in the press box and sends him by pneumatic tube an official summary of what is going on.[10]

If this analogy sounds silly, it still can be extended further. The man in the phone booth who is handicapped by not seeing the game writes a story that is muddled and gets the score wrong. Adding a final absurdity, the newspapers that subscribe to the news service use the story and no one ever complains about it.

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*Pneumatic tubes were removed during the 1972 October term, but Press officer Barrett McGurn doubts that they ever posed much of a problem. "I get stacks three feet deep from the print shop via the clerk's office. It would have been an immense and, I think, senseless job to tube them. They are printed in the basement, not on the bench."

These criticisms have less relevance today since there have been some physical changes in the courtroom, but for the most part, the analogy to baseball, especially with regard to reportorial staffing patterns, does hold. The physical setting for reporters at the Court is relatively simple. On the first floor of the Court building a press suite includes a small press room and an office for the Court's public information officer. Until 1973, the press room was linked to the courtroom by pneumatic tubes through which reporters could send copies of opinions, orders and handwritten notes. The tubes were attached to four news desks just below the bench and hidden from view.[11] The desks were occupied by Court regulars or fulltime correspondents. But, the desks were removed when Chief Justice Burger had the bench curved so that all justices could see each other in the course of arguments. Seats for reporters were moved to the left of the courtroom where newsmen and justices have a clear view of one another and of all others in the courtroom. The chutes from the old positions were removed and newsmen now slip in and out as they choose.[12] The changes eliminated the possibility of reporters on the first floor speaking to reporters in the courtroom who had to remain silent. What the changes do is equalize the reporters in the setting. No longer do regulars, such as AP and UPI correspondents, get special seating arrangements and more rapid physical movement of their copy to the pressroom.

Reporters in this spartan setting must be quite self-sufficient. There is no bombardment of briefings, press conferences and mimeographed releases. The Supreme Court has a single press officer, Barrett McGurn, whose role is discussed later. McGurn supplies the reporters with such essential materials as: (1) lists of all cases on the regular docket with descriptive subject matter notes and an indication of the origin of the cases, (2) complete files of briefs and records of the regular docket cases, (3) notices of newsworthy cases from the miscellaneous

docket taken from information in the clerk's office, (4) biographical information and portraits of the justices, (5) statistical summaries of the Court's work, and (6) a list of names of all clerks to justices. Most important, of course, are printed copies of opinions released at the precise time of announcement and mimeographed copies of orders, also released at the time of announcement.

The constraints of this setting and its limited technical assistance stand in marked contrast to other reportorial assignments in Washington. In the Executive and Legislative branches the reporter is the target of press releases, special briefings, news conferences and an array of public relations materials designed to assist him in his job. Not so at the Supreme Court. As David L. Grey has written in his useful study, The Supreme Court and the News Media, "The Court job in many ways is like no other in Washington. The Court is the only part of the Federal government where the man is left totally on his own."[13]

Reporters covering the Court work under the same demands that face other journalists. They must produce readable, understandable copy under considerable deadline pressure, but they do it at great disadvantage. As Grey observed:

> There is one overriding difference between Supreme Court coverage and other types which is not readily apparent. In many fields, there is at least partial truth in the statement that if the press has not covered a news development, the event or trend, in effect has not happened. News is what the press makes it; the press by its selection of events to report, in a sense, "makes" the event happen; many things are "real" only if the press has reported them. By contrast, each case before the Court goes into history books whether or not the press has written a word on it. There is an automatic and permanent record on everything the Court has decided which, in effect, acts as a check on the newsman covering the Court. A missed case, improper emphasis, or an error in fact in a news story will be obvious for those experts in the field who have a chance to read exactly what the Court said. By comparison, in other news fields, many public officials (such as in Congress or the State Department) have to rely heavily on the press for interpretation and information.[14]

Inseparable from the lack of a public relations tradition is (1) the lack of openness in Court decision-making (2) the inaccessibility of Court officials,

especially when compared with others in the Executive or Legislative branches. At the same time that these barriers make Court reporting difficult, the Court's critics seldom cease in their offers of analysis, explanation and review. The Court, on the other hand, speaks once, then is silent.

Anthony Lewis of the New York Times, who covered the Court for several years, has remarked that "all of official Washington is acutely conscious of public relations" while "the Supreme Court is about as oblivious as it is conceivable to be."[15] The lack of public relations tradition can be explained, in part, historically.

Prior to the Civil War in the Dred Scott case,[16] an associate justice released a dissenting opinion to the newspapers before Chief Justice Roger B. Taney had even finished writing his majority opinion.[17] The incensed Chief Justice ordered the clerk of the Court not to release its opinions until they appeared in the official compilation of the Court. This order remained in force until the 1920's when columnist David Lawrence urged Chief Justice William Howard Taft to make proofs available when all the justices had finished oral reading of their opinions on a decision day. Before that newsmen had to write their stories without even having a text of opinion from which to work.[18]

In 1935, shortly after the Associated Press misinterpreted a majority opinion in the gold-standard cases that resulted in a bulletin stating the opposite of the Court's intent, Chief Justice Charles Evans Hughes allowed reporters to have proofs of opinions as the justices began reading them aloud.[19] This was about the same time that the Court moved into its present building and provided physical space to reporters for the first time. A Court press officer was also employed to distribute documents and other raw material. However, his role differs sharply from that of government public information officers in the Executive branch. The lack of a public relations tradition is seen not simply in the absence of

promotion or publicity of decisions, justices or the Court as an institution, but also in the traditionally oblivious attitude toward deadline problems of the media. While other agencies cater to media, the Court has not, until recently, paid much attention. Political scientist Chester Newland summarizes the problem that the newsman faces, thusly:

> No positive program of public relations exists...press releases are not utilized [and] decisions are announced, often in large numbers on a few opinion Mondays [changed in 1965, although most opinions are still handed down on Decision Monday] with no apparent regard for consideration of timing. And as a rule the justices and Court subordinates do not comment publicly on opinions or respond to criticisms of the Court. Press interviews with justices are rare, and press conferences are non-existent.[20]

While decision-making in the Executive and Legislative branches has considerable public visibility, discussions of the justices prior to a decision day are secret. The assignment of opinions and their actual preparation, closed conference discussions of the justices, preliminary votes and changes in voting alignment are all aspects of the process of Supreme Court decision-making that are hidden from public view. John P. MacKenzie, Supreme Court reporter for the Washington Post, has commented on this secretive aspect of the Court. He wrote as follows in the Michigan Law Review:

> The process of marshalling a court, of compromise, of submerging dissents and concurrences, or of bringing them about, can only be imagined or deduced by the contemporary chronicler of the Court...This is not to say that newsmen need to be privy to the Court's inner dealings, helpful as that might be, to describe its decisions fully and well. But...murky decision-reporting may be the reporting of murky decisions as well as the murky reporting of decisions.[21]

Lack of explanation by the Court is seen, for example, in the handling of petitions for certiorari,--"a process replete with elements of subjectivity and perhaps even arbitrariness--eludes the attempts of newsmen to fathom, much less to communicate to the general public, the sense of what the Court is doing."[22] It has been suggested that certiorari action is the antithesis of what an opinion of the Court

is supposed to represent, namely a reasoned judicial action, explained in a reasonable manner. Thus, with its policy of secrecy the Court must bear some burden for the lack of public understanding of its actions.

Because the press is not privy to the decision-making process, Court decisions are often interpreted as the end, rather than the beginning, of significant social arguments. Since opinions are sometimes written in such a way that they "mask the difficulties of a case rather than illuminate them;" new decisions sometimes cannot be reconcilled with earlier rulings.[23] According to Justice William O. Douglas in his dissent in Malone v. Bowdoin, 369 U.S. 643, this is often because "policy considerations, not always apparent on the surface, are powerful agents of decision."[24]

No doubt the sharpest contrast between coverage of the Supreme Court and of other institutions of the Federal government is the problem of access to news sources. Commenting on this, Anthony Lewis wrote, "To do an adequate job of covering any part of the Executive Branch or Congress a reporter must have some personal relationship with the officials concerned. That does not mean intimate friendship. It does mean a certain amount of mutual understanding and confidence."[25] Rarely do the justices amplify or explain their opinions. The often-complex opinions are difficult for the layman to understand, yet the reporter must offer a factual interpretation and under deadline pressure.

When there is interaction between justices and the press it is almost always for "background" purposes only which means that there can be no attribution to a member of the Court. The interchange between justice and newsman is usually "confined to private and 'non-newsy'" situations, according to Grey who reports that justices sometimes send notes to individual newsmen indicating that "You didn't read page 6 of my opinion."[26] The accessibility of a justice depends on the individual justice. Felix Frankfurther played a significant behind-the-scenes role in urging improved press coverage of the Court. Thurgood Marshall

once sent a note to reporters explaining why he had not taken part in a case. Chief Justice Burger has granted at least one interview to a news magazine. There are dozens of other examples of contacts between newsmen and justices, some of them official, some social, but these contacts never result in direct comment on cases before the Court. The Court has traditionally avoided publicity to protect itself from political pressures. As Professor Alexander Bickel of Yale points out, "...justices have their being near the political marketplace...but the system embodies elaborate mec nisms for insulation."[27]

B. Reporters Performance at the Court

As late as 1968, John P. MacKenzie of the Washington Post, would make this harsh judgment of his colleagues who cover the Supreme Court:

> With few execptions, the press corps is populated by persons with only a superficial understanding of the Court, its processes, and the values with which it deals. The Court has poured out pages of legal learning, but its reasoning has been largely ignored by a result-oriented news industry interested only in the superficial aspects of the Court's work. The Court can trace much of its "bad press", its "poor image," to the often sloppy and inaccurate work of news gatherers operating in mindless deadline competition, the chief obstacle in these critical years to a better understanding of the Court and our laws and liberties.[28]

The baseball coverage analogy suggested earlier was once raised by late Justice Felix Frankfurter who told James Reston that the New York Times would never think of sending a reporter to cover the Yankees who knew as little about baseball as its reporters covering the Supreme Court knew about law. "The Justice overstated the case ag nst the Times but was quite right so far as most of the American press was concerned. The press still does a poor job of covering the courts in general and the Supreme Court in particular," asserts James E. Clayton, who covered the Court for the Washington Post from 1960 to 1964.[29]

The low esteem that MacKenzie and Clayton seemed to have for Court reporting is directed at a small coterie of persons who cover the Court with any regularity.[30]

Fewer than forty reporters attend often enough to apply for press passes for the entire term. And only seven persons have fulltime assignments at the Court.

Associated Press coverage of the Court, since it reaches more media organizations than any other single source of reporting, has incurred the wrath of many media critics. Some accounts suggest that fully half of all American newspapers get all their Court coverage from the AP.[31]

Defending his staffers against critics, Wes Gallagher, general manager of the Associated Press, wrote, "We don't like the present [Supreme Court] set up, but it is not of our making,"[32] Gallagher wrote. He suggested that decisions be distributed to reporters in one of the large conference rooms prior to the oral readings to allow reporters to digest the material. He also urged the Court to provide an information officer to clarify confusing or complex decisions. In addition, Gallagher offered this lament for the beleagered AP reporters who covered the Court:

> [AP reporters]...must quickly identify a case, determine the decision, wade quickly through thousands of legalistic words of the majority and dissenting views, refer to the background which they have assembled and get the story moving by telephone dictation--all in a matter of a few minutes. This is quite different from the problem of the New York Times, which has hours to digest a decision before press time.[33]

In a 1965 study of decision-making by a reporter under deadline pressure at the Supreme Court, David L. Grey observed the working habits of Dana Bullen, then Court reporter for the Washington Evening Star.[34] Grey selected Bullen because he was a compromise type of a reporter whose reports were medway between the exhaustive and intellectually-oriented coverage New York Times and the hastily-prepared work of the Associated Press.

The observed reporter, like other Supreme Court journalists in recent years, had a law degree and a bachelor's degree in journalism. He had received an award for Court coverage from the American Bar Association at the time of the study and

later was awarded a Nieman Fellowship at Harvard University. Among Grey's findings:

--Decisions in story selection and emphasis are hard to make precise or in any detail, but some general patterns can be traced. Bullen knew at this moment in time how many cases the Court had left, although he had to prepare himself primarily by guessing;

--In general, decisions in news selection at the Court depend largely on what is available that day. The reporter has to make decisions about how much "weight" to give a particular story;

--Reporters keep an eye on what the competition is doing, often calling attention to a particular story. This allows the reporter to validate his news sense and gain peer reinforcement.

--Bullen acknowledged that his news judgment tended to be conservative. He prefered to be on the safe side--understating, rather than overstating what the Court had decided.

Justice Frankfurter's conversations with James Reston during the 1950's eventually resulted in the appointment of an energetic and well-known reporter. Anthony Lewis, who became widely-known for his book, Gideon's Trumpet (a description of the events leading up to Gideon v. Wainwright, 372 U.S. 335) was a young Times reporter who spent a year studying law at Harvard under a Nieman Fellowship. Assigned to the Court in 1955, Lewis spent nine years writing what one critic called, "one of the most satisfying chapters in American journalism." The critic continued:

> He [Lewis] led his readers into the great marble hall where the nine secluded men were trying to apply the principles of the Anglo-Saxon law to a social revolution. With amazing lucidity, he traced their intricate reasoning and explained the precedents from which it rose. His stories were models of historical insight and accuracy even though they were written under the pressures of daily journalism.[36]

In an address to the Conference of the Second Judicial Circuit of U. S. Courts, Lewis explained how he handled the mass of material that confronted him on a Decision Monday. His efforts included looking over every printed petition for certiorari and jurisdictional statement filed in the Supreme Court. A second step was discussing important cases in advance with informed lawyers, relying heavily on those in the Solicitor General's office. Other lawyers who are knowledgable about the case in question were also consulted. Finally, to pick up human qualities, Lewis attended the oral arguments. For similar reasons he "almost always listens to the oral statement of opinions. I absorb more by ear than by eye...One can sometimes glimpse the deep emotions involved in the very difficult decisions the justices of the Supreme Court have to make. And there is a flavor of humanity."[37]

In spite of a continued barrage of criticism of Court coverage, some of it from distinguished, capable reporters, there is little doubt that regulars covering the Court are far better qualified than they once were and that there is increasing emphasis on higher calibre coverage. While newspaper and wire service reporters have been upgrading themselves, television newsmen have also exhibited heightened interest in covering the Court. Until recently, broadcast organizations hardly covered the Court at all. In 1971, for example, Carl Stern of NBC reported that his network only covered the Court about six times a year.[38] But, in 1973, CBS News attracted Fred Graham of the New York Times to its staff especially to cover the Supreme Court and various Federal Court issues related to the Watergate crisis. Part of broadcasting's reluctance to cover the Court stems from the prohibition on cameras and broadcasting equipment in the courtroom. Thus Court coverage is quite difficult for broadcasting organizations, which must rely on sketch artists and interviews outside the courtroom and thus outside of the action.

It is likely that improved Court coverage will come as news media organizations more carefully consider the Court's "publics," those persons most keenly concerned about the activities of the nation's highest court. By examining opinion studies and polls concerned with the Court, newsmen can gain some intelligence about who is interested in the Court and how to gauge general public knowledge of it. (A discussion of public opinion and the Court is found later in this paper). Certainly public perceptions of the Supreme Court should be used to shape reportorial strategies. One scholar suggests that those who communicate about the Court should be aware of public officials as well as public and private interest groups in covering the various decisions.[39]

C. Sources for Supreme Court News

The major news sources reporters rely on in covering the Court are (1) the actual opinions, orders and other official documents of the Court, (2) the justices, (3) the Supreme Court bar, (4) the Supreme Court information officer and (5) critics of the Court.

In at least two ways since 1960, the Court has assisted the reporter in his agonized battle with time in covering the Court. One was the extension of Court hours (now from 9 to 5, Monday through Friday), which was a boon to persons with deadlines for afternoon papers and television newscasts. Another was a modification in the former practice of reporting decisions only on Monday. Even though many decisions are still handed down on Mondays, others are spread out during the week, thus helping the reporter adjust his work load and allowing more thought and planning in coverage of the Court.

Opinions--The opinions of the Court as sources of news are only as good as the reporter's understanding of them. Competent coverage requires advance study and analysis, reading lower court decisions and an ability quickly and accurately to synthesize the main points of law, translating them into language that laymen will understand and comprehend. To some extent is is the form of the news story that creates

problems for the reporter. Explaining a majority decision with several concurring and dissenting opinions can severely strain the need for clarity and understanding in the news story. The reporter is required by his editor to organize the story in a decreasing order of importance. Thus the placement of various elements of a complex case, may have considerable impact on the reader's perceptions. The reporter is "on his own" in a hectic race with time once opinions are handed down. If he doesn't understand a case by decision day, the story may be lost to his readers forever. Of course longer, interpretative articles in newspapers and magazines as well as broadcast documentaries allow reporters the luxury of additional time for preparation.

Justices--While few justices have had close relationship with newsmen, there have been efforts in recent years to provide the media with more background briefings. The traditional taboo against press conferences and briefings was broken by Chief Justice Burger in September 1970 when he invited two wire service reporters into his chambers for a "backgrounder" on a court order joining six desegregation cases for combined hearing and decision. Other reporters in the Court's press room were later advised of the session and assured that they too would be invited to similar sessions in the future. The trade weekly, Editor & Publisher, expressed some doubts about the sessions. An article by Luther A. Huston asserted:

> The background sessions with reporters obviously are designed to give the members of the press corps some special insight into what the Court does and why so that their stories may be not only accurate but informatively intelligent. Because the first background session produced some unanswered questions, skepticism persists as to whether the sessions will contribute to better reporting of the Supreme Court. For instance, the reporters who were invited to the first briefing were informed that the Chief Justice was not to be identified as the source of anything they wrote and, since they did not feel free to talk, only scraps of what was said have become public information.[40]

Since the justices so rarely speak out on cases before the Court, press coverage of them is minimal and usually confined to feature stories that mark milestones and anniversaries. Two examples were a 1968 interview Justice Black granted to CBS News and a 1973 press briefing Justice Douglas held on the occasion of his serving on the Court longer than any other justice in American history. In both instances, the two justices discussed their legal philosophy. Justice Douglas in a no-hold-barred session appeared before 50 newsmen for 30 minutes. Former Justice Tom Clark appeared on camera twice in April, 1974. However, TV press conferences by justices are still uncommon.

Attorneys--The Supreme Court bar includes those attorneys who argue cases before the Court. The most easily accessible of these persons are members of the Solicitor General's staff, mainly because of their close proximity to the Court. These persons are helpful, granting frequent interviews and making certain that various exhibits, petitions and supporting documents are brought to the attention of the reporters. Others in the Justice Department are similiarly helpful to reporters, although their "help" is often viewed by the reporter as somewhat self-serving. The reporter also has access, either in person or by phone, to private attorneys with buisness at the Court. They may include nationally-known authorities in particular legal specialties.

Public Information Officer--Similarly, the Supreme Court's public information officer is also a "feeder" for information to reporters. From 1947 to 1973, this position was held by one man, Banning E. Whittington, a former United Press correspondent, and perhaps for this reason studies and comment about the press officer have not usually distinguished between the functions of the position and the personal style of its present occupant. With the appointment of a new press officer in 1973, Barrett McGurn, a former New York Herald-Tribune reporter and government information officer, it is possible that the traditional view of the position will be altered. Until 1947, the press officer was a lawyer from the Clerk's office. Whittington was the first newsman to hold the post.

Under Whittington the press officer (now called public information officer) was not a court spokesman in any sense of the word. He was neither a press secretary nor a public relations man who speaks on policy questions. Nor did he offer specific interpretations of cases or attempt to clarify issues. He was careful to avoid answering any questions that could involve opinion or judgment. This passive view of the press officer (Whittington) was challenged by the Goldschlager study which suggested that "the informal relationship that develops between the press officer and the regular reporters may have a significant effect on the choices of cases that are deemed 'newsworthy' and carried by the wires."[41] Yet, Goldschlager admitted that the possible influence of the press officer was somewhat subtle. He might, for example, say that "there's something good later," or "this is the best story of the day," thus helping to define Court news.[42] Goldschlager said this probably had more influence on new reporters at the Court and those visiting for only one day, since they have more need for assistance than the regulars. Although many newsmen would disagree with the press officer's judgment, Goldschlager said that he was a "significant source of reinforcement for the status quo definition of what is newsworthy."[43] Whittington, now retired, in a letter to the author refused to comment on or offer clarification of Goldschlager's assumptions, saying only, "I'm sure my problems were about the same as those of any other public information officer in Washington."[44]

David Grey offered this comment on the press officer:

> In analyzing the Press Officer's job it is difficult to distinguish between what is attributable to the individual and what is inherent in his role. The Press Officer's assignment is largely determined by others; he has virtually no power or policy-making function. As a staff member of the Court, he is responsible to the Chief Justice. The result is that he is usually closed mouthed about everything. His view is that the Court does not and should not give the press much help--that the institution is the Court of law, not a legislature.[45]

Some critics have suggested a change in the press officer's role, asking that he become more like his counterparts in the Executive and Legislative branches. As Grey indicates, the role of the press officer may be more a function of an individual personality and the way he perceives his job. However, it should be noted that in spite of his limited policy-making and commentary role, the press officer is the "feeder" for opinions and the keeper of various records that are of assistance to the reporters. In the survey reported later, Barrett McGurn's performance is the subject of reporters' comment.

Critics--Much of the coverage of the Court centers on criticism of the institution and its decisions. Critics are a primary source of information about the Court although few of them are easily accessible to reporters who spend most of their time in the Supreme Court building. Thus much of the coverage of Court criticism is handled by persons who are not responsible for regular reporting at the Court. According to Anthony Lewis, criticism of the Court "falls into three broad categories: abusive criticism motivated largely by the results reached in particular cases, criticism of the Court's exercise of power of judicial review of legislation, and academic criticism directed chiefly at the reasons the Court gives for results."[46]

The result-oriented criticism which attacks the substance of particular cases is, according to Lewis, largest in volume and loudest. It appears almost anywhere and is generated by a wide range of interest groups and individuals. Criticism aimed at judicial review is more complex than the result-oriented attacks. It scrutinizes the Court from at least four perspectives: (1) the Court as a forum for moral protest, (2) the Court as a catalyst (legislative), (3) the Court as a non-political arbiter and (4) the Court as an instrument of national unity.[47] The new, academic criticism comes mainly from law professors and others who write in law reviews and legal periodicals. This criticism spans a broad range of issues

and concerns, but whether result-oriented or theoretical it provides perspectives useful to the Supreme Court reporter. The story of the Supreme Court is more than the decisions written by the justices, but it is also the response of critics and the nation to those decisions.

D. Public Opinion and the Court

Another important source (and barometer) for media coverage of the Supreme Court is public attitudes toward the institution and its work. The traditional literature of American democracy assumes that the Court is highly-regarded by the American people. In recent years, however, this assumption has been called into question. Survey researchers have probed the public's attentiveness, evaluation of, and probable reaction to the Court and its decisions. In a 1966 Wisconsin study, John Kessel found that the Court's relative prestige among other governmental institutions was quite low.[48] When respondents were asked, "Which branch of government does the most important things in deciding how Americans are going to live," 52% said Congress, 27%, the President and only six percent, the Supreme Court. Three percent said "it depends," and 12% professed not to know.

Former Chief Justice Warren asserted that the Court is the "least understood of all our governmental institutions"[49] and national public opinion studies tend to confirm this. George Gallup's American Institute of Public Opinion has monitored public attitudes toward the Court since the 1930's. In one early study, Gallup asked whether people favored limiting the power of the Supreme Court to declare acts of Congress unconstitutional. This study, conducted during the early years of the New Deal, reflected an anti-Court expression that followed party lines. Overall, 41% favored cutting the Court's power, while 59% opposed this move. But, Democrats favored the proposition 80% to 20% while Republicans opposed it 78% to 22%.[50] Perhaps responding to Franklin D. Roosevelt's attack on the "nine old men," a 1938 poll suggested that people favored mandatory

retirement of Supreme Court justices by a 70-30 margin.[51] Other studies indicated a steady slippage in positive attitudes toward the Court. However, in a 1957 Gallup study when respondents were asked which branch of the government they have the greatest respect for, the Court had a slight lead over Congress and the Presidency. The ratings: Court, 30%; Congress, 29%, and Presidency, 23%. During the 1950's, the most vehement anti-Court sentiment was usually found in the American South.[52] In the same 1957 study, attitude change about the Court was examined. Twenty percent said their attitudes had changed, 78% said it had not and two percent didn't say. Fifteen percent, or three-forths of those who said their attitude toward the Court had changed said they now hold an unfavorable opinion while three percent said, favorable and two per cent were indifferent or gave vague replies.

In 1963, the question was phrased somewhat differently, asking, "In general what kind of a rating would you give the Supreme Court, excellent, good, fair or poor." The results: excellent, 10%; good, 33%; fair, 26%; poor, 15% and no opinion, 16%.[53] An analysis of opinion on the Supreme Court by groups within the population show that the college-educated think more highly of the Court than do those with less formal education. Nationally, Democrats rate it somewhat higher than do Republicans (1963). The Court's qualitative rating has fluctuated somewhat over the years as this table indicates:

TABLE 1

Question: In general, what kind of rating would you give the Supreme Court?

	1967	1968	1969
Excellent	15%	9%	8%
Good	30%	28%	25%
Fair	29%	32%	31%
Poor	23%	32%	31%
No Opinion	9%	11%	13%

SOURCE: George H. Gallup, The Gallup Poll, Public Opinion, 1935-1971, 3 vols., New York: Random House, 1972.

Gallup concluded that a citizen's evaluation of the Supreme Court bears a close

relationship to his educational attainment, suggesting that the higher the educational attainment, the higher the esteem for the Court.[54] This conflicts sharply with other findings that indicate that the more the education of the respondent, the greater the criticism of the Court. Generally, though, persons who are politically aware tend to have more reaction to Supreme Court issues as a 1965 Seattle study in two Congressional districts suggests. In that study 21% of the respondents were unable to articulate any opinion about the Court and two-thirds of the respondents with "no opinion" frankly stated they possessed too little information to form an opinion about the Supreme Court.

A number of studies have examined public awareness of the Court. In 1945, George Gallup found that only 40% of a national sample could accurately indicate the number of Supreme Court justices. But in 1949 when asked to name the highest court in the land, 86% correctly answered "the Supreme Court." In 1964, the Survey Research Center asked respondents, "Have you had time to pay attention to what the Supreme Court of the United States has been doing in the past few years." Forty-one percent said, "yes." When asked to comment further and specify an issue, 57% could name one issue. 34%, two; eight percent, three; and less than one per cent could name four.[55]

William J. Daniels, a political scientist who has studied the Court and public opinion, has written as follows:

> Generally, there is a low level of public awareness and knowledge about the Supreme Court. This tends to be significant in that the high knowledge and high status are related to greater disapproval of the Court.
>
> ...No matter what criteria of knowledge one sets, the public is not politically attentive. As a result there is a very low level of knowledge about the Court. Only a minority of the public is sufficiently aware to name individual justices or to comment on recent Court decisions. It seems that one must be politically aware for the Court to have visibility.[56]

One clear finding of several studies was an inverse relationship between knowledge and support for the Court. Greater knowledge tends to decrease support for the Court, which raises questions about the utility of promoting greater public understanding of the Court for the purposes of inspiring confidence in the institution and its work. This alarmist view notwithstanding, however, it is natural that persons with a higher level of knowledge will be more discerningly critical of the Court. Perhaps this is a healthy sign in a democracy.

A perusal of Gallup's findings for the forty years he has been assessing attitudes toward the Court, indicates that any findings must be studied in terms of the specific temporal setting. The relationship between opinions about the Court and party affiliation is significant since the Court is usually identified with the party in power. Thus, Republicans tended to be more critical of the Warren Court in its later years, just as Democrats opposed the Court during Roosevelt's earlier years in office.

The Wisconsin and Washington studies mentioned here were probably most useful in terms of raising questions about the Supreme Court's relative esteem. Unfortunately, these were small scale studies in particular locales and are not generalizable to the nation. There are also serious problems in comparing Gallup data from the 1930's with data from the present. Methodological changes over that time are substantial. Survey data keyed more carefully to particular demographic characteristics and educational levels would be of more use to the media in using this intelligence as a guide to public affairs coverage of the Court.

E. **Editors' Attitudes Toward Court Reporting**

Most of the literature of Supreme Court reportage focuses on reporters and their relationship to the Court as a source of news. Grey, certainly the seminal researcher in the area, also looks at the Court as communicator, but Goldschlager is one of the few who has given much attention to news executives' perceptions of Court coverage. In a survey of 143 managing editors (106 returned questionnaires) of daily newspapers, Goldschlager found the media executives receptive to more

legal trend stories and more interpretative coverage, which was at variance with perceptions reporters had of their editors' demands.

The editors queried in the study were generally positively impressed with the output of wire service reporters and other correspondents at the Court. In response to an evaluative question about the quality of the reporting, 79 editors found it complete and clear, while only 14 found stories unclear and 16, too long. Seven said stories were too short. Seventy said they edited the stories to fit available space while 19 usually fit the story to the space without much editing. Court coverage was heavily concentrated on stories about decisions, although the editors showed a receptiveness to material about oral argument and analysis of legal trends. Most editors (76) saw news of the Court being "as important as Congress and the Presidency," while only 19 said it was less important than the other two branches. Only one person thought it was more important.

Methods by which wire services could provide better coverage of the Court were: more spot analysis of issues and cases, 65; regular monthly columns on legal issues and news, 8; regular weekly columns, 6; your own suggestion, 10; and all right as is, 6. Goldschlager concluded that "it is essential to construct a definition of legal news as viewed by the reporters' editorial supervisors for they determine how much of the reporters' choices are filtered out to the general public."[58]

F. Prescriptions for Supreme Court Reporting

Most critics of Supreme Court reporting acknowledge communications problems to have dual origins, some coming from the Court itself, some from the press. There have been proposals for change in press-Court relations for much of this century and only limited progress has been made. The extension of Court hours and the spreading out of decision days are often cited as major improvements. Chief Justice Burger's background sessions are also a departure in previous Court practice. The efforts of the Association of American Law Schools' Supreme Court

Project (discussed later in this section) have been hailed as an important step forward for better Court reporting.

David Grey, in 1968, proposed improvements in Court reporting through innovations at two levels, (1) the Court and bar, and (2) the press. For the Court and bar, Grey suggests the following:

> --The Court has considered the idea of having a skilled interpreter of its decisions--someone who could help newsmen understand the main legal issues involved ...What is needed is an expert of some kind--not the traditional press agent--but someone who could help newsmen and lay publics in providing objective and nonpromotional information about legal issues.
>
> --Another change...is the possibility of having each case decision headnote (the very brief digest of a case) written up and released when the case is announced rather than afterwords.
>
> --Another logical alternative would be to make sure all opinions had a summary statement written into them--designed deliberately not only for the press but also for hard pressed legal scholars and students. Some of the justices already tend to do this but the practice is too informal and inconsistent.
>
> --A more controversial proposal is for distribution of decisions to the press on a hold-for-release basis, with perhaps a "lock-up" arrangement whereby newsmen could be isolated from any contact with the outside world.
>
> --Still another major suggestion that has been adopted, in part, by the Court: spreading out of decision days rather than letting them pile up.[59]

Even though he does not offer it as a formal proposal, Grey asks, "Indeed...is the Court so <u>special</u> that it could not be covered on occasion "live" or on tape by television."[60] Former Federal Communications Commissioner Newton N. Minow and two co-authors oppose televised Court sessions or explanations by justices. They write "They [television presentations] "would diminish the Court's prestige and throw the Court, that aloof final arbiter, into the whirlpool of controversial political television."[61] They continue:

> Because television conveys individual images so well, the entry of the Court into television could focus public attention on the personalities of the justices,

> not on their decisions. The medium of the law is written language. Television "explanations" of decisions by the Court would make it extremely difficult to determine the precise holding of the decisions--the "explanations" might be taken as part of the decisions themselves.[62]

Proposals for the Court to change its behavior have always been couched in gentle language. For example, this editorial comment in Columbia Journalism Review:

> Change, if any will have to come from those concerned with the decisions and the reporting of them. Recognizing the possible consequence of public misinterpretation of a key decision, the justice writing the majority opinion might well strive to make crystal clear not what the decision is and what its scope is, as well as what the principal reasoning behind it is. There is nothing requiring that Supreme Court opinions be less than lucid.[63]

While mechanical improvements in the way the Supreme Court presents its opinions are the fodder for attractive proposals for change, they are really quite superficial and not particularly significant. It is more realistic for the press to look critically at its own practices and performance. Legal training for journalists has been widely discussed. This is sometimes accomplished through professional fellowships, such as the Nieman Program and also through more recent specialized reporting efforts by schools of journalism. Better trained reporters, like Anthony Lewis and Fred P. Graham, for example, have demonstrated the worth of these efforts.

The approach to news coverage should be changed in the view of Editor Wallace Carroll who believes that the press is obsessed with "interesting angles" at the expense of "important essences" of news events.[64] Grey agrees saying that too often "speed is typically the culprit and excuse."[65]

Other recommendations for improved Supreme Court coverage have come from the bench and bar. One of the most helpful was a project of the Association of American Law Schools. In its 1963 report, the AALS Committee on Education for

Professional Responsibility submitted the following recommendation:

> The AALS...appoint a special Advisory Committee on Supreme Court Decisions composed of law teachers who regularly followed the work of the Supreme Court. When the Court takes jurisdiction of a case which (in the judgment of the committee chairman) is of substantial news interest, a member of the committee will be asked to prepare a short memorandum explaining the significance of the case, the issues involved and possible alternative bases of decision...These memoranda could be reproduced and distributed through the new Washington office of the Executive Director to the ten to fifteen "regulars" who report the work of the Court for their newspapers, wire services, radio and television stations.[66]

Thus, in 1964 the memoranda program began with the enthusiastic support of the news media and then Chief Justice Warren who said, the memoranda aided "the various news media in reporting on the Court's decisions in the interest of achieving more accurate and more perceptive accounts of what the Court held--or did not hold."[67] At first the committee limited itself to only the most newsworthy cases, preparing 31 memoranda during the 1964 October term. In 1965, the number of memoranda were increased, 89 dealing with 113 cases, being prepared. During the first year of the program, a law professor was present in the press room on a decision day to assist reporters in interpreting the meaning of a Court decision. Due to time pressures and the hectic atmosphere of the press room on a decision day, the practice was discontinued after one year. The professors simply weren't getting many inquiries from the hurried reporters.

By 1966 nearly 150 journalists were on the mailing list to receive the memoranda. Professor Jerome A. Barron of George Washington University conducted a survey to determine the response to the service.[68] His findings, in part,

were as follows:

		Number	Percent	
1.	Do you find the service of assistance?	40	50%	Considerable
		32	40%	Some
		7	8.8%	Little
		1	1.2%	No comment
2.	Would your newspaper be willing to pay for the service	46	57.5%	Yes
		28	35%	No
		6	7.5%	No comment

In an article in Saturday Review, Gilbert Cranberg wrote, "The law professors' project is probably the most constructive single contribution to advancing public understanding of the Court in recent years..."[69] The project, which began with a $5,000 annual budget, was costing about $22,000 by 1971. It was supported by a grant from the American Bar Foundation and received high praise from Chief Justice Burger who called the memoranda, "a welcome boon to those who are most acutely aware of the need for effective communication to the public, which is largely through the news media."[70] In 1972, as funds ran out, an effort was made to have the news media pay for the services. While a few papers agreed to do so, most did not and the project was discontinued and no memoranda were written during the 1972-73 term. In 1973, the American Law Institute in collaboration with the American Bar Foundation agreed to reinstate the service on a subscription basis. It will begin again in the 1974-75 term.

The law professor preparing the memoranda were careful to state that the contents of their memoranda "do not necessarily reflect the views of any person or organization connected with the program, and quotations from it should not be attributed to any of them or to the author without their specific authorization. No part of this memorandum has any approval by the Supreme Court or any branch or office of the Government."[71]

Ever so subtly, Chief Justice Burger has begun to modify the Court's public relations tradition. Earlier, when he was an appeals court judge in Washington, prior to his elevation to the high court, Burger often made personal calls to

newspaper editors, suggesting that a forthcoming case was particularly newsworthy. And as Seth Goldschlager stated, Burger has "addressed himself to the question of press coverage more directly and successfully than any other Chief Justice before him."[72] Brushing aside the Court's historical obliviousness to the press, Burger, shortly after taking office, asked the court's press corps to prepare a memorandum of problem areas where procedures could be altered to aid reporters' work.

A dozen reporters drafted a background report for the Chief Justice and strongly enunciated their position, "while we fully recognize that there is a necessary realm of confidentiality within the Court, we work under one overriding principle, that the Court, like all branches of government, should be an open institution."[73] Among other things, the reporters asked for a better system of notification of general news developments, access to more of the court records, such as official correspondence related to a case, and a less passive role for the press officer. The reporters further detailed their proposals, requesting:

1. Simultaneous release of all opinions on a given day.
2. Distribution of all opinions a few hours in advance to reporters in a lockup with no access whatever to the outside, until a common, fixed release time.
3. Advance notification by docket number on a confidential basis--of the cases to be decided that day, with opinions themselves distributed as at present.
4. Release of headnotes with opinions.
5. Joint release of related decisions.
6. Clear specification, in cases on which the Court is divided on more than one issue in a single opinion, of the concurrence or dissent of individual justice on each issue.
7. Release of opinions on days other than Monday in May and June.
8. Release of texts to reporters in the alcove section of the Courtroom at the six front desks.[74]

Burger took three months to consider the requests, then held an unprecedented meeting with reporters at the Court. While only a few of the items were eventually acted upon (see Part II), Burger nonetheless provided a channel for the reporters' complaints. He agreed to release headnotes on decisions when they are announced and to spread out decisions on decision days and to schedule newsworthy decisions

on Monday afternoons rather than mornings to allow more reporters to cover the oral arguments. Of the lockup proposal, Burger called it "an idea whose time has not come,"[75] but he suprised many reporters by stating that he might eventually refurbish the Court chambers, providing a line of glass-walled booths where correspondents could telephone directly to their papers and broadcast outlets.

As the foregoing analysis indicates, most of the literature of Court reportage concerns itself with the process of covering the "worst reported institution." While the reporters who cover the Court get brief mention, little is actually known about them. And, clearly, understanding the reporters--who they are, how they perceive and evaluate their work and the work of their colleagues as well as their attitudes toward Court information policies--is central to the advancement of knowledge about reportage at the Court. Thus, this study builds on previous work in an attempt to learn more about the reporters and their attitudes.

II. THE SUPREME COURT PRESS CORPS: DEMOGRAPHICS AND ATTITUDES

Although most of the literature about Supreme Court reportage has been concerned with the performance of the Court press corps, it has been highly generalized. With the exception of a few widely-known reporters, little has been written about the men and women who cover the Court. Accordingly a survey of these persons, designed to ascertain both demographic and attitudinal information, was initiated. The survey, conducted in January 1974, sought information that would provide (1) a profile of the Supreme Court reporter, (2) a reportorial assessment of Court coverage, and (3) an indication of attitudes about the public information policies and practices of the high court.

A questionnaire was sent to the entire population (23) of reporters covering the Court during the 1973-74 October term.[76] The reporters fell into three broad

categories: regulars, those who have the Court as their primary assignment and spend fulltime there; semi-regulars, those who cover the court assiduously, but usually along with another agency, such as the Department of Justice; and occasionals, who cover the Court less frequently, usually only when there are decisions of wide interest. The Court's press officer reported that there were seven regulars, 11 semi-regulars (whom he called "also assiduous") and five occasionals at the time of the study. These designations have no formal standing, but are useful in categorizing Supreme Court reporters in terms of the time they spend at the Court. Questionnaires were sent to all 23 reporters. Fifteen were returned fully completed. Three persons declined (in letters to the author) to complete questionnaires and five did not respond at all.

A. Demographic Profile

Reportorial assignment of the respondents included wire services (1), news magazines (2), daily newspapers (7), television networks (2) specialized publications (1) and combination assignments (e.g. news magazine and specialized publication or and wire service and daily newspapers), (2). Eleven respondents were male; four, female. They ranged in age from 27 to 50 with most in their early thirties. The reporters' news media experience ranged from a low of 4.5 years to a high of 27 years with an average experience level of 11.57 years.

This previous professional experience was quite varied although most reporters had been general assignment reporters in major and medium-sized cities. Several covered metropolitan and state government and politics before coming to Washington. Three persons had other Washington assignments before going to the Court. These included covering regulatory agencies and Capitol Hill. One persc had been a foreign correspondent; one, a national political correspondent. Several mentioned handling such local assignments as police, courts and education prior to joining the Supreme Court press corps.

When asked what part of the United States they came from, responses were: East (5), Midwest (5), Southwest (2), South (1), West (1). An open ended question asked them to indicate their educational backgrounds. Since several have both law degrees and masters degrees in journalism, and some did not respond to this question at all, the following figures do not total 13. Educational background is as follows:

Law degree.....6
M.A. (journalism).....5
B.A. (journalism).....5
B.A. (political science).....2
B.A. (economics).....1
M.A. (others).....1

To provide context for the educational question, respondents were asked, "What advice about educational training would you have for a young person who aspired to cover Court or other aspects of legal system?" Respondents could indicate as may or as few options as they desired. The result was:

General liberal arts education.....10
Training in a law school.....7
Graduate work in constitutional law.....4
Training in a journalism school.....3
No response.....1

B. <u>The Reporter at the Court</u>

Tenure at the Court for the reporters responding to the study was rather brief. The senior respondent had served eight years while the briefest tenure was one year. The average time at the Court was 2.63 years.

When asked what percentage of their working time they spent at the Court, the result was: 75-100% (4), 50-75% (5), 25-50% (3), less than 25% (3). When asked to indicate what percentage of the time spent covering the Court is devoted

to different types of stories, responses were (using averages) as follows:

Decisions	49.92
Advance stories about docketing, cert.	22.69
Analyzing legal trends, major issues	12.00
Other: pursing briefs, television documentaries, discussion with justices	10.70
Oral arguments	4.69
total	100.00%

Reporters give the quality of coverage at the Court high marks indicating that in recent years, they believe coverage has improved (11). One person said the coverage had remained about the same, no one said it declined, and three chose not to respond because they had come to the Court quite recently and did not feel competent to make this evaluation. Similarly, most (14) thought coverage of the Court was accurate while one called it "extremely accurate." When asked to evaluate the quality of Court reporting for wire services, newspapers, news magazines and radio-television; wire services and newspapers got the highest marks, while news magazines and radio-television weighted toward mediocre. The results were as follows:

	Excellent	Good	Mediocre	Poor	No Comment
Wire services	4	8	2	0	1
Newspapers	3	8	3	0	1
News magazines	0	4	8	2	1
Radio-television	0	2	8	3	2

When asked how they felt about the amount of space, time and general play given the Supreme Court by the news media, respondents fell into the following categories: Excellent-Generous (2), Adequate-About Right (7), Inadequate (4), No Response (2). One respondent elaborated:

> "Overall 'about right' is about right, but that doesn't mean much, since it is made up of good amounts of coverage (early in the term) and undercoverage (especially in June). Much of this has to do with the flow of decisions from the Court, of course, but it also has something to do with a lack of tough-mindedness of the part of editors. Since the guy

> covering the Court tends to be one of your better reporters--and probably one of your higher paid--his stories get overplayed on sparcer decision days; on the dambreaking days, even if the regular reporter is given extra help, there tends to be some feeling that regardless of their importance, we can't have three scotus stories on the front page."

Another respondent said that newspapers in the Washington area were "generally good" while radio and television was inadequate. Still another respondent pointed out that the reporters for the most part see only Washington and New York papers and are therefore, not competent to make this kind of assessment.

C. Accuracy of Supreme Court Reporting

Respondents were asked, "Can you think of an example in the last five years when the result of a Supreme Court decision was reported inaccurately." Five responded in the affirmative, seven said they could not think of an example and three did not respond. One person mentioned the "interpretations given the Pentagon Papers decisions" which he called "questionable." Three persons mentioned the 1973 abortion decision (Roe v. Wade, 410 U. S.__) as getting inaccurate treatment. As one reporter put it:

> One of the most startling decisions to come from the Court in recent years was the one striking down a broad array of state abortion laws. Unfortunately, it was not clearly presented in some of its particulars by the justices and the relay by the press to the public was no improvement. The question that was mishandled was: for what number of months of pregnancy is the decision to have an abortion one to be decided by the woman and her doctor, free of state interference. Most of us (including this writer, who came to the right answer hours after having filed a story that was inaccurate on that point) told our readers and listeners the answer was three months. We did so because Justice Blackmun, writing for the majority, said the state could not interfere in a decision to abort that had been reached by a woman and her attending physician during the "first trimester." That seemed clear enough, but only on much closer reading does it become apparent that even in the next three to four months the state is still fenced out of the decision to terminate the pregnancy. During the middle group of months "a state may regulate the abortion procedure to the extent that the regulation reasonably relates

to the preservation and protection of maternal health. Examples of permissible state regulation in this area are requirements as to the qualifications of the person who is to perform the abortion; as to the licensure of that to be performed, that is, whether it must be a hospital or may be a clinic or some other place of less-than-hospital status; as to the licensing of the facility; and the like."

Thus, the state during this middle-months period is still not empowered to say to the woman that she may not have an abortion. Only in the final months does the state acquire this power. Blackmun said some medical authorities say a fetus is viable, that is, able to live outside the womb, at six months, but that the preponderance of opinion puts the point somewhere closer to seven months. The state was to be permitted to ban an abortion outright (to protect the right of the unborn child) only when the fetus was viable, the implication being that the Court would strike down any state law that declared the moment of viability to be before the end of six months.

What this drawn-out explanation was meant to show was that the real answer to the question of how far into pregnancy a woman could proceed and still have an abortion without state interference--assuming she found a willing doctor--was not three but at least six months.

"This," the reporter said, "was one of the most critical questions to be answered when the case [abortion] was decided, and most reporters dropped the ball." The reporter acknowledged that the Court "seemed in this case to be writing even more opaquely than usual, but that's no excuse."

Another story said to be inaccurate was a 1972 New York Times article on social security survior benefits for bastards which asserted not the Court decision meant bastards thenceforth be treated like legitimate children in awarding of benefits. However, says a respondent, "that decision had been made by the Court earlier. This time around the decision was applicable to a certain numerically insignificant class of bastards."

One respondent said that Supreme Court reporters in bull-sessions have occasionally discussed the idea that there should be "diversity in reporting on

a decision which isn't a model of clarity." The reporter continued:

> Is it bad journalism/bad public policy when one story picks on one part of a decision to emphasize and a competitor picks another, or even when one calls it a minor decision of limited importance and another a sweeping revolution? I tend to think not, if that diversity truly reflects ambiguity left behind by the decision, but there's a lot of uneasiness among the press corps. A related problem: we may all be trapped by the myth that every pronouncement of the Court says something definitive about the state of the law: the case or controversy stuff is really true, but you don't get on the front page writing, 'The U.S. Supreme Court decided today by a 7-2 vote that Mrs. Estrella Sanchez can sue her landlord for the cost of laundering slipcovers rainspotted because of a leaky roof.'

D. Audience for stories

When asked for whom they are writing and how they perceive their audience, responses were varied. Several mentioned "intelligent high school graduates," as a primary target. One reporter said his stories are written for the average high school graduate in the first two paragraphs, but that the focus changes to the sophisticated reader from there on. Three reporters said that they write for a dual audience: general readers with interests in legal developments and lawyers who are interested in breaking news on the subject. One television reporter said he aims his material at the mass audience "without a natural interest in legal subjects." Another said, "just people, though probably an educated class." Another newspaper reporter said his stories were aimed at "persons of high educational level with legal interests." Two reporters (for specialized publications) said their material was written for business executives. One reporter simply answered, "my editor." Another offered a more detailed explanation:

> For general news stories that move on our wire to newspapers and radio-tv, my audience is the readers of the several dozen largest and best financed papers in the U.S....as well as viewers of newscasts from the major network and a relatively few well-heeled independent stations.

Some respondents indicated that they write both for domestic and foreign consumption and vary their stories accordingly.

4. Court Information Policies

A number of specific improvements in Supreme Court information practices were cited in the questionnaires in response to a question that asked for an evaluation of this aspect of Court operation since the appointment of Chief Justice Burger. Four reporters said information policies and practices had improved during the Burger years. Three said they were about the same, four said there was no basis for judgment and two gave no response. Specific information policy changes under Burger cited by the reporters were: (1) headnotes on opinions as they are issued, instead of being written later as was formerly the practice, (2) the annual meeting that the Chief Justice holds with reporters to discuss the mechanics of court coverage, (3) the Chief Justice's policy of giving a reason for not sitting on a case, (4) multiple decision days, (5) reduction of oral delivery of opinions, especially dissents; (6) the appointment of a new press officer. One reporter criticized the Chief Justice for removing the reporters' desks just below the bench, but admitted that "this is more symbolic than substantive."

Although several reporters expressed considerable enthusiasum for Barrett McGurn and his press information operation, there was still an overwhelming impression that the public relations activities of the court should be expanded. A question asked, "Much has been written about the lack of a public relations position at the Court. In that regard do you think that the activities of the press officer should be:"

Accelerated and stepped up	9
Remain about the same	5
No Response	1
Be diminished	0
Be phased out altogether	0

McGurn was praised for "making an actual effort to get information from the Court to the press," and for improving the organization of the press office. Another

reporter wrote, "The new information officer chosen by the Chief Justice this term is 100% superior to the former one." Yet this view is by no means universal. One correspondent upon reading a preliminary draft of this study made an angry call to the author. "The suggestion of improvement under McGurn is laughable," he said. "He [McGurn] is held in general contempt by most of the fulltime reporters. And sometimes he lies to us." The dissenting reporter suggested that the major improvement under McGurn is that the press officer "has enough bureaucratic clout to get another press officer which did speed up the movement of paper."

Opinion favors the 1969 lockup proposal in which members of the press corps would be locked up so that opinions could be distributed to them in advance of a Court session. Nine favored this plan, no one opposed it, four had no opinion and two indicated that it should only be used when needed, namely at the end of the term when there is a barrage of opinions. Several respondents said they felt such a system would be of greatest use to the wire services.

When asked in an open-ended question about two or three changes in Supreme Court information practices they would implement if given the opportunity, the reporters mentioned a number of these innovations. They included having an information officer "closer to the justices for more behind-the-scenes information," and that the information officer should "convince justices that they are accountable to the public and must discuss some matters publicly." One respondent suggested the addition of an additional information officer while others urged the "avalability of someone to explain the significance of decisions. Other suggestions included non-attributable press conferences with justices and copies of the speech-making schedules of justices. Among the procedural suggestions were allowances for sufficient numbers of order lists "with phone calls to justices who grant stays or otherwise act on their own," more copies and more liberal distribution of opinions, conference list distribution by case name rather than just number.

One reporter thought opinions should have an "accompanying paper with less legalese and more simple language." Other items included access to immediate transcripts of oral arguments, disclosure of votes on denial of certiorari and orders, as well as the allowance of cameras inside the courthouse and the previously-mentioned lockup system.

Summary and Conclusions

The news media reporter at the Supreme Court seems to be a relatively young, well-educated individual with several years of media experience before coming to the Court. Tenure at the Court is rather short. Most of the reporters queried are pleased with their own performance and those of their colleagues. Newspapers and wire services rated highest in the performance indicators, while news magazines and broadcast news was less widely praised. Most say they are pleased with the play their stories get in their own publications or newscasts. Slight improvement has been seen in court information practices during the Burger years although a number of specific improvements were still being sought. While pleased with the press officer and the improvements he has made in the press office, the reporters still want more public information activity at the Court. Almost all respondents said they consider working at the Court a difficult assignment. As one broadcast reporter put it, "It's a tough assignment, particularly with the immediacy demands of network radio. My desk wants spots as quickly as I can get them done and with my time in such demand for other assignments, it's difficult to research the case. My desk relies on my accuracy...and when I think of all the audience perhaps basing their reaction on what I say, perhaps you can understand why I think backgrounders, and a simpler syllabus would be helpful."

Another reporter said that the Court has become "a duller, less newsworthy institution, just as a talented group of journalists had gathered to cover it. The problem now is not mechanics of coverage, but that there is much less to

cover these days." No doubt the fact that the Watergate events have not yet involved the Supreme Court is partly accountable for this statement. Agreeing, one reporter said "we often sit around at the Court thinking it is a shame that we don't have more momentous stories to write about. But, in part those things are accidents of history. To be sure, though, the Burger Court is nibbling around the edges of old decisions--take the criminal defendant and obscenity cases, for example." Surely, this makes for less interesting and less vital reportage than the more turbulent years of the Warren Court.[77]

What this limited survey clearly indicates is that generalized criticism of the Court is of little value. The tiny Supreme Court press corps is really quite specialized, both in terms of its perception of its audience and in the way it meets the demands of quite different types of publications and broadcast outlets. The relationship of Supreme Court reporters to their sources still remains a fuzzy area. Whether the increasing number of reporters with law degrees suggests that lawyers are "taking over" Court reporting is a question that ought to be pursued.

The reporters' attitudes toward information policies of the Court had a tone of resignation. Most reporters assume the Court to be unyielding in its basic stance toward public information on its deliberations and rationale for decisions. Accepting this, they focus their concerns on procedural issues that could result in some short-term gaines. This acceptance sadly suggests a potential cooptation of some reporters. Several comments by reporters in the questionnaires suggests a deferential attitude toward the Court as they responded to questions about policy change with such statements as "you don't understand."

Perhaps, though, it is short-sighted to practice "overkill" in analyzing and criticizing the Court's press corps. Its size and limited resources make impossible the full coverage of one of the most overwhelmingly complex stories

in national life. More appropriately, criticism should be focused on newspaper and broadcasting groups as well as national magazines which have abdicated their public responsibility by failing to cover the Court.

Increasing the size of the press corps would ease the weighty burden now carried by the wire services, which are the sole agencies covering the Court in a broad sense. Other publications and broadcast outlets are more selective, relying heavily on the wires for general coverage.

Particularly disturbing is the sentiment that the press corps has improved markedly just as the Court has grown less interesting as a national news story. If this is so, it may be difficult to hold constant the present quality of reporters at the Court, let alone enhance it.

Beyond these general observations lies a significant task for communication researchers. Little is known about the output of Supreme Court reporters. Most reporters responding to the survey, for example, admitted that they see very little of the work of their colleagues. They have little basis for evaluating overall coverage. No doubt content analytic studies would do much to provide insight into coverage patterns and performance. Similarly, studies of reporters and their relationships with sources at the Court would be helpful. Finally, the Court press corps should not be studied in isolation, but should be related to the rest of Washington journalism, to reporters covering the other branches of government or particular Executive departments. Such studies would do much to accelerate our understanding of popular concepts of national government.

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BACKNOTES

[1] Statement by Chief Justice Earl Warren in "Report on Special Committee on Supreme Court Decisions," Proceedings of Association of American Law Schools, 131 (1966, Part One).

[2] Chester A. Newland, "Press Coverage of the United States Supreme Court," 17 Western Political Quarterly, 15 (1964).

[3] Ibid.

[4] Max Freedman, "Worst Reported Institution," Nieman Reports, April 1956, 2.

[5] Ibid.

[6] Newland, op. cit.

[7] Lionel S. Sobel, "News Coverage of the Supreme Court," 56 American Bar Association Journal, 548 (1970).

[8] Ibid.

[9] Seth S. Goldschlager, "The Law and the News Media, A study of the ways in which the news media transmit information about legal process with particular emphasis on the reporting of the U.S. Supreme Court actions and the concomitant images of the legal process thereby communicated," Senior Thesis, Yale Law School, 1971, unpublished, 12.

[10] Wallace Carroll, "Essence, not angle," Columbia Journalism Review, Summer 1965, 5.

[11] Letter to the author from Barrett McGurn, Supreme Court Press Officer, May 16, 1974.

[12] Letters to the author from Barrett McGurn, December 10, 1973 and January 28, 1974.

[13] David L. Grey, The Supreme Court and the News Media, Evanston: Northwestern University Press, 1968, 46-48.

[14] Grey, op. cit., 44.

[15] Anthony Lewis, "Problems of Washington Correspondent,"33 Connecticut Bar Journal, 365, (1959).

[16] 19 How. 393 (1857).

[17] Newton N. Minow, John Bartlow Martin, Lee M. Mitchell, Presidential Television, A Twentieth Century Fund Report, New York: Basic Books, 1973, 94.

[18] Grey, op. cit., 37-38.

[19] Grey, op. cit., 37-38.

[20] Newland, op. cit., 16.

[21] John P. MacKenzie, "The Warren Court and the Press," 67 Michigan Law Review. 305 (1968).

22 Ibid., 305.

23 Ibid., 304.

24 Malone v. Bowdoin, 369 U.S. 643.

25 Lewis, op. cit. 363.

26 Grey, op. cit., 51.

27 Alexander M. Bickel, The Least Dangerous Branch, Indianapolis: Bobbs-Merrill, 1962, 197.

28 MacKenzie, op. cit., 303.

29 James E. Clayton, "Interpreting the Court," Columbia Journalism Review, Summer 1968, 48-49.

30 MacDonald, Grey, Lewis, op. cit., passim.

31 See Goldschlager, passim.

32 Excerpts from a letter sent by Wes Gallagher, general manager of the Associated Press to Wallace Carroll, in Carroll, op. cit., 6.

33 Ibid.

34 David L. Grey, "Decision-Making by a Reporter Under Deadline Pressure," Journalism Quarterly, Autumn 1966, 426-28.

35 Carroll, op. cit., 4-5.

36 Ibid.

37 Lewis, op. cit., 368.

38 Minow, et. al, op. cit., 92.

39 Grey, op. cit., 121-34., also see William J. Daniels, "The Supreme Court and Its Publics, 37 Albany Law Review 632-661 (1973).

40 Luther A. Huston, "Chief Justice Breaks With News Tradition," Editor & Publisher, Sept. 12, 1970, 12.

41 Goldschlager, op. cit., 42-44.

42 Ibid.

43 Ibid.

44 Letter to the author from Banning E. Whittington, former Supreme Court press Officer, January 17, 1974.

45 Grey, op. cit., 46-48.

45 Anthony Lewis, "The Supreme Court and Its Critics," 45 Minnesota Law Review 305-332 (1959).

46 Ibid., 306.

47 John Kessel, "Public Perceptions of Supreme Court," 10 Midwest Journal of Political Science 167 (1966). Also see discussion in Daniels, op. cit. 633-34.

48 Gilbert Cranberg, "What Did the Supreme Court Say?," Saturday Review, April 8, 1967, 90.

50 George H. Gallup, The Gallup Poll, Public Opinion, 1935-1971, New York: Random House, 1972, Vol. I, 2.

51 Ibid., Vol. I, p. 536.

52 Ibid., Vol. II, p. 1502-03.

53 Ibid., Vol. III, p. 1836-37.

54 Ibid., Vol. III, p. 2068.

55 Daniels, op. cit., 636.

56 Daniels, op. cit., 635-37.

57 Goldschlager, op. cit., 292.

58 Goldschlager, op. cit., 8.

59 Grey, op. cit., 137-50.

60 Grey, op. cit., 144.

61 Minow, et. al., op. cit. 100-101.

62 Ibid

63 "On Covering the Court," Columbia Journalism Review, Fall, 1962,2.

64 Carroll, op. cit., passim.

65 David L. Grey, "Covering the Courts: Problems of Specialization," Nieman Reports, March 1972, 17-19.

66 Proceedings of Association of American Law Schools (1964), "Reports of Committees, 1964 Annual Meeting, 164, Part I.

67 Supra. Note 1.

68 Proceedings of Association of American Law Schools (1966), "Report of Special Committee on Supreme Court Decisions," Part I, 327-29.

69 Cranberg, op. cit., 90.

Proceedings of Association of American Law Schools (1971), "Report of the Special Committee on Report of Supreme Court Memoranda Project," Part I, 139.

Proceedings of Association of American Law Schools (1972), "Report on Supreme Court Memoranda Project," Part I, 113.

Goldschlager, op. cit., 259. Additionally, one reporter in a telephone interview with the author in May 1974 suggested that the Chief Justice's press relations have deteriorated "since his mini-court idea advanced by the Freund Commission got shot down." The reporter accused Burger of manipulating the press through public appearances, reports and other activities. Burger's activism in the area of judicial administration is usually promoted through a skillful use of the press, the reporter stated.

Letter and background paper submitted to Chief Justice Warren Burger by the members of the Supreme Court Press Corps, Sept. 22, 1969.

Ibid.

Goldschlager, op. cit., 275.

The Supreme Court press as of January 1974 was as follows:

Regulars
- Charlotte G. Moulton, UPI (dean)
- Vernon A. Guidry, Associated Press
- Fred Barnes, Washington Star
- John MacKenzie, Washington Post
- Tom Stewart, Reuters
- Jack Landau, Newhouse News Service
- Warren Weaver, New York Times

Semi-Regulars
- Wayne Green, Wall Street Journal
- Linda Matthews, Los Angeles Times
- Dean Mills, Baltimore Sun
- Bill Rinkle, Gannett News Service
- Salvatore Micciche, Boston Globe
- Penny Girard, Fairchild Publications
- Dan Moskowitz, McGraw Hill News Service
- Leah Young, New York Journal of Commerce
- Lee Rennert, McClatchy News Service
- Elder Witt, Congressional Quarterly

Occasionals
- Dan Garcia, ABC News
- Fred Graham, CBS News
- Carl Stern, NBC News
- David Beckwith, Time Magazine
- Stephen Lesher, Newsweek
- Richard Ross, U.S. News and World Report

The idea of a less visible court is also reiterated in a newspaper column by James J. Kilpatrick who wrote, "This is not a spectacular court....It may be that we are in one of those lulls in the law when nothing much happens. Such periods come along." (James J. Kilpatrick, "Supreme Court Maintains a Low Profile," Minneapolis Star, June 17, 1974, p. 6A.